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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,860	08/22/2001	Michael R. McClain	002A.0032.U1(US)	9128
29683	7590	04/14/2004	EXAMINER	
HARRINGTON & SMITH, LLP 4 RESEARCH DRIVE SHELTON, CT 06484-6212			TORRES, ALICIA M	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/934,860

Applicant(s)

MCCLAIN, MICHAEL R.

Examiner

Alicia M Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 9, and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4, 8, 9, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no structure set forth on the draft rod to provide the function of limiting upward vertical movement of the deck relative to the frame to a predetermined upper stop location. It is not the connection of the draft rod to the deck that limits the movement as is implied by the claim language.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Seegert.
5. In regards to claim 1, Seegert discloses a lawn mower (12) having a frame (shown in part at 48), a motor (22) connected to the frame (48), a cutting blade (see column 3, lines 39-41) connected to the motor (22), a deck (14) located above the cutting blade and vertically movably mounted to the frame (48, see column 4, lines 29-30), a draft rod (34) connected between the

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deck (14) and a portion of the frame (48, see column 3, lines 45-46), the draft rod (34) being movably connected between the deck (14) and the portion of the frame (48) to limit upward vertical movement of the deck (14) relative to the frame (48) to a predetermined upper stop location.

6. In regards to claims 2-4, Seegert discloses that the mounting portion of the frame comprises an axle assembly (48, see column 3, lines 54-60) of the lawnmower (12), as per claim 2, wherein the axle assembly (48) comprises a hole (52) and a portion (38) of the draft rod (34) movably located and longitudinally slidable in the hole (52, see column 4, lines 13-17), as per claims 3 and 4.

7. In regards to claims 5-7, Seegert discloses a draft rod (34) comprising an enlarged section (unnumbered), which is larger than the hole (52) in the axle assembly (48) and comprises a bent portion of the draft rod (34), as per claims 6 and 7, located between the axle assembly (48) and the deck (14, see figure 3).

8. In regards to claim 8, Seegert discloses wherein the deck (14) comprises a bracket (30) on an exterior side of the deck (14) and an end of the draft rod (34) is pivotably connected to the bracket (30).

In regards to claims 19 and 20, Seegert discloses a lawn mower (12) comprising a frame (48), a motor (22) connected to the frame (48), a cutting blade (see column 3, lines 39-41) connected to the motor (22), a deck (14) vertically movably connected to the frame, the deck (14) being located over the cutting blade, a vertical movement limiting bar (34) connected between the deck (14) and a portion of the frame (48), the limiting bar (34) being pivotably connected to a mounting section (30) of the deck (14) and longitudinally slidingly connected through a hole (52)

in the portion of the frame (48), wherein the limiting bar (34) comprises a stop surface formed by a bent section of the bar (34, see figure 3), as per claim 20, located between the deck (14) and the portion of the frame (48) for limiting longitudinal movement of the bar (34) through the hole (52) in the portion of the frame (48).

### ***Response to Arguments***

9. Applicant's arguments filed December 24, 2003 have been fully considered but they are not persuasive.

10. In response to applicant's arguments the claim 1 is definite in scope, as expounded in the 35 U.S.C. 112 rejection above, it is not the connection of the draft rod to the mower deck that limits vertical upward movement as implied by the claim language. There is additional structure necessary between the draft rod and the mower deck to limit vertical upward movement of the deck relative to the frame. This additional structure is absent from the claim language.

11. In regards to applicant's argument that Seegart fails to limit upward vertical movement during in-use operation, the deck will naturally reach a point where it can no longer be raised, this is the predetermined upper stop location. The structure of the Seegert mower that provides for the upper stop location is irrelevant as this structure has not been clearly set forth in the claim language of the instant application.

### ***Allowable Subject Matter***

12. Claims 10-18 are allowed.

***Conclusion***

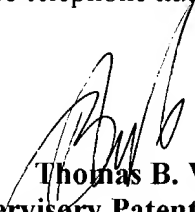
13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.

  
**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

AMT April 8, 2004